06-CV-00099-EXII

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

06 CV 1360

JUDGE HOLWELL

JENNIFER COHN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, - against - JAMES FREY and RANDOM HOUSE, INC., Defendants.	06 CV ________

NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. § 1441

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendant Random House, Inc. ("Random House" or "Defendant") hereby removes to the United States District Court for the Southern District of New York the above-captioned action, pending as Index No. 06/600287 in the Supreme Court of the State of New York, County of New York (the "State Court Action"). As grounds for removal, Random House states as follows:

Factual Background

1. On January 30, 2006, Plaintiff Jennifer Cohn filed the State Court Action in the Supreme Court of the State of New York, County of New York.

2. Defendant Random House was served with a summons and complaint ("Cmplt.") on February 1, 2006. A true and correct copy of the summons and complaint is annexed hereto as Exhibit A.

3. The complaint arises out of the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey. (Cmplt ¶ 5-6).

4. The complaint contains two counts which seeks relief against defendants. Plaintiff seeks to recover for alleged violation of N.Y. Gen. Bus. Law § 349 (Cmplt. ¶¶ 2-24) and for promissory estoppel (Cmplt. ¶¶ 2-24).

5. Plaintiff seeks recovery of "not less than Ten Million Dollars ($10,000,000)" (Cmplt. ¶ 29), as wells as treble damages pursuant to N.Y. Gen. Bus. Law § 349(h). *Id.* at ¶ 24.

6. Plaintiff is a citizen of the State of New York. (Cmplt. ¶ 10).

7. Defendant Random House is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.

8. Defendant Frey is a citizen of the State of New York.

9. Plaintiff seeks to pursue her claims on behalf of a nationwide class of "all United States purchasers" of the Book. (Cmplt. ¶ 8). Alternatively, Plaintiff seeks to pursue her claims on behalf of a class of "the New York State purchasers" of the Book. *Id.* at ¶ 9.

Federal Jurisdiction under the Class Action Fairness Act

10. Application of CAFA. The Court has original jurisdiction of this case pursuant to the Class Action Fairness Act of 2005 ("CAFA" or "the Act"). CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and the number of

members of all proposed plaintiff classes exceeds 100. 28 U.S.C. § 1332(d)(2)(A) and (d)(5).[1] As explained below, each of these criteria are met here.

11. Amount in Controversy. Plaintiff's allegations demonstrate that the aggregate amount in controversy in this case exceeds $5,000,000, exclusive of interest and costs. Plaintiff states that she seeks to recover "not less than Ten Million Dollars ($10,000,000.00)," as well as treble damages. (Cmplt. ¶ 29, 24, pp. 7 ("Relief Requested")). In addition, based on sales of the Book, the amount in controversy exceeds the $5,000,000 threshold. (Declaration of Donald Weisberg ("D. Weisberg Dec."), annexed hereto as Exhibit B, at ¶ 5). The book was sold in both hardcover and paperback editions. *Id.* at ¶ 4. More than 2.5 million copies of the paperback editions were sold with a suggested retail price of $14.95. *Id.* at ¶ 5. These figures also demonstrate that in excess of $5,000,000 is at issue in this case. *Id.*

12. Citizenship of the Parties. Plaintiff seeks to pursue her claims on behalf of a nationwide class of "all United States purchasers" of the Book. (Cmplt. ¶ 8). Accordingly, there is diversity of citizenship between a member of a putative class and defendants Random House and Frey:

a. There are putative plaintiffs in all 50 states. (*See* D. Weisberg Dec., Ex. B, at ¶ 6)

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[1] CAFA applies to any action commencing on or after February 18, 2005 – the date when CAFA was enacted. *See* CAFA § 9 ("The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.").

b. Defendant Random House is a New York corporation with its principal places of business in New York, New York, and thus is a citizens of New York for these purposes.

c. Defendant Frey is a citizen of the State of New York.

d. Accordingly, this action is a class action where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

13. Number of Class Members. As the above figures indicate, there are more than 100 class members.

14. Mandatory Jurisdiction. CAFA classifies qualifying class actions (i.e., ones in which the $5 million amount-in-controversy is met) by the number of class members located in the state where the action is filed and the citizenship of the defendants. Where less than 1/3 of the class members are located in the state where the action is filed, federal courts are required to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(2). Where more than 1/3 but less than 2/3 of the class members are located in the state where the action is filed, courts are required to apply a group of factors to determine whether to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(3). Where more than 2/3 of the class members are located in the state where the action is filed and certain other criteria are met, courts are required to decline jurisdiction. *See* 28 U.S.C. § 1332(d)(4). In this case, federal jurisdiction over this action is mandatory, not permissive, under CAFA because less than 1/3 of the class members are citizens of New York. *See* D. Weisberg Dec., Ex. B, at ¶ 6; 28 U.S.C. § 1332(d)(3) and (d)(4).

Procedural Matters

15. Removal is Timely. A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. 1446(b). The United States Supreme Court has held that the 30-day period prescribed in section 1446(b) runs from the date of formal service of the complaint. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999). Defendant Random House was served no earlier than February 1, 2006. This notice of removal is thus timely, as the 30-day period for removal for defendant Random House does not expire until March 3, 2006.

16. Removal to Proper Court. This Court is part of the "district and division embracing the place where" the State Court Action was filled -- New York County, New York. 28 U.S.C. 1446(a).

17. Consent Not Required. Pursuant to 28 U.S.C. § 1453(b), the consent of other defendants to this removal is not required.

18. Pleadings and Process. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is "a copy of all process, pleadings, and orders served upon" defendant Random House. No defendant has answered or otherwise filed a responsive pleading to the complaint.

19. Filing and Service. A copy of this Notice of Removal is being filed with the Clerk of the Supreme Court of the State of New York, County of New York, and is being served on all counsel of record, consistent with 28 U.S.C. § 1446(d). The Supreme Court of the State of New York, County of New York, is located within this district.

WHEREFORE, defendant Random House, Inc. respectfully removes this action, now pending in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: New York, New York
February 21, 2006

DAVIS WRIGHT TREMAINE LLP

By: [signature]
Elizabeth A. McNamara (EAM1987)
Robert D. Balin (RB 5847)
Linda Steinman (LS 5906)
1633 Broadway
New York, New York 10019
(212) 489-8230

Attorneys for Defendant
Random House, Inc.

Of counsel:

Mark B. Blocker
Michael C. Andolina
Marissa J. Reich
SIDLEY AUSTIN LLP
One South Dearborn Street
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Stephen G. Contopulos
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SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JENNIFER COHN, Individually and On Behalf Of All Others Similarly Situated,

Plaintiffs,

-against-

JAMES FREY and RANDOM HOUSE, INC.

Defendants.

CLASS ACTION SUMMONS

Index No. 06/600287

NEW YORK
COUNTY CLERK'S OFFICE

JAN 3 0 2006

NOT COMPARED
WITH COPY FILED

Plaintiffs designate NEW YORK County as the place of trial. The basis of venue is the plaintiff's and defendant's residence.

To the above-named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon THOMAS M. MULLANEY, ESQ., whose address is 708 Third Avenue, Suite 2500, New York, New York, 10017, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: New York, New York
January 30, 2006

Yours, etc.,

LAW OFFICES OF THOMAS M. MULLANEY

By: ______________________
Thomas M. Mullaney
708 Third Avenue, Suite 2500
New York, New York 10017
(212) 223-0800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JENNIFER COHN, Individually and On Behalf Of All Others Similarly Situated,

Plaintiffs,

-against-

JAMES FREY and RANDOM HOUSE, INC.

Defendants.

CLASS ACTION COMPLAINT

Index No. ______________

Plaintiffs, on behalf of herself and all others similarly situated, allege as follows against JAMES FREY ("FREY") and RANDOM HOUSE, INC. ("RANDOM HOUSE"), on information and belief formed after an inquiry reasonable under the circumstances:

JURISDICTION AND VENUE

1. At all relevant times, Defendant Frey was and is a resident of the State of New York. Additionally, Defendant Frey has conducted and does conduct substantial business in the State of New York

2. At all relevant times, Defendant Random House was and is a corporation organized under the laws of the State of New York, and doing business in the State of New York, with its principal place of business located at 1745 Broadway, NY 10019.

3. This complaint is not based upon federal law or any federal question. The amount in controversy for each named Class representative and each absent Class member does not exceed, exclusive of interest, fees and costs, the sum or value of $75,000.00. Plaintiffs in this action do not seek disgorgement of any fund in which they have a common and undivided interest, but seek to recover separate and distinct damages along with their attorney's fees.

4. Venue is proper in this County pursuant to CPLR § 503, as the acts upon which this action is based occurred in part in this County. Thousands of members of the Class reside in this County, and purchased Defendant Frey's book "A Million Little Pieces" here, and thereby were injured in this County. Random House also deceptively published "A Million Little Pieces" in or from this County. Defendants received substantial compensation and profit in this County.

PRELIMINARY STATEMENT

5. The controversy surrounding Defendant Frey's book "A Million Little Pieces" needs little elaboration at this point. Styled a memoir, Defendant Frey's book was in fact and fictional account of his "history" of criminal conduct and efforts to deal with his drug and alcohol addiction. Millions of people bought this book under those false pretenses (the book has sold nearly four million copies in hard- and soft-cover worldwide). Some, including the Class representative (a health care professional), bought it specifically because of its redemptive theme, and recommended it to others for that same reason.

6. Random House published "A Million Little Pieces" as a memoir, but only after it was originally submitted as fiction. Not believing it was marketable as fiction, Random House instructed the author to resubmit it as a memoir. After Defendant Frey did so, Random House then went on to publish and sell "A Million Little Pieces" without checking which if any of the newly-factual elements of the memoir were actually true.

7. The purpose and effect of this deceptive and unlawful conduct has been to deceive millions of purchasers of "A Million Little Pieces." Those consumers have been injured by paying for a book they would otherwise have not bought, recommended, or read.

8. These claims are prosecuted by two classes. The first class consists of all United States purchasers of "A Million Little Pieces" during the Class Period, as defined in paragraph 12 below.

9. The second (alternative) class consists of the New York State purchasers of "A Million Little Pieces" during the Class Period, as defined in paragraph 12 below.

PARTIES

10. Plaintiff Jennifer Cohn resides in Manhattan, New York. In 2005, before the revelations of the falsehoods in "A Million Little Pieces" became public, Ms. Cohn purchased and read the book. In addition, Ms. Cohn, a health care professional who holds a Master's Degree in Social Work, recommended the book to several people who were struggling with substance abuse or brushes with the law.

11. Various individuals, partnerships, corporations and associations not named as defendants in this Complaint have participated in the violations alleged herein and have performed acts and made statements in furtherance hereof.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action as a class action pursuant to Article 9 of the CPLR on her own behalf and on behalf of all other members of the two classes described above. The relevant time period for both Classes is April 2003 to January 23, 2006. ("the Class Period").

13. Both classes exclude defendants, their co-conspirators and their parents, subsidiaries, affiliates, officers, directors and employees. Also excluded are any Federal, state or local governmental entity, and any judge or judicial officer presiding over this matter, judicial staff, and the members of their immediate families.

14. The Classes are so numerous that joinder of all members is impracticable. There are tens of thousands of members of the Classes who are geographically dispersed throughout as well as outside the State of New York.

15. Plaintiff's claims are typical of the claims of the members of the Classes because Plaintiff and all Class Members were injured by the same wrongful conduct of the Defendants alleged herein.

16. There are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual Class members. Such common questions include:

- Whether James Frey falsified portions of "A Million Little Pieces";
- Whether Defendant Frey did so at the behest of Defendant "Random House";
- Whether Defendant Random House knew of Defendant Frey's falsifications;
- Whether Random House published and sold "A Million Little Pieces" either despite or because of those falsifications;
- Whether the alleged conduct violated N.Y. Gen. Bus. Law § 340;
- Whether the alleged conduct violated N.Y. Gen. Bus. Law § 349;
- Whether the alleged conduct violated U.C.C. §§ 2-314 and 315;
- Whether Plaintiff and the Classes have a claim for fraud, negligent misrepresentation, reasonable reliance and/or unjust enrichment;
- Whether Plaintiff and members of the Classes are entitled to damages and the appropriate measure of such damages.

17. As the claims of Plaintiff are typical of the claims of the Classes, and Plaintiff has no interests adverse to or which irreconcilably conflict with other members of the Classes, Plaintiff is an adequate Class representative.

18. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced and competent counsel knowledgeable in the prosecution of class action litigation. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against a large corporate defendant. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

19. New York has a clear and substantial interest in preventing the conduct described herein as the alleged wrongdoing occurred in New York in part and affected all Class members, among others.

AS AND FOR A FIRST CAUSE OF ACTION

N.Y. Gen Bus. Law
(Against All Defendants

20. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 19 hereof with the same force and effect as if fully set forth herein.

21. N.Y. Gen Bus. Law §349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

22. N.Y. Gen Bus. Law §349 (h) provides that "any person who has been injured by reason of any violation of this section may bring…an action to recover his damages or fifty dollars, whichever is greater…The court may award reasonable attorney's fees to a prevailing plaintiff."

23. By reason of the deceptive conduct alleged above, Defendants engaged in consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner. Defendants conduct caused millions of readers of "A Million Little Pieces" to purchase that book under the false pretense that it was a memoir.

24. Plaintiff and the Class also seek treble damages pursuant to N.Y. Gen Bus. Law §349(h) because defendants' conduct was willful and knowing. To wit, Defendant random House instructed Defendant Frey to re-label his book, originally submitted as fiction, as a "memoir" to make it saleable. Then, without checking any of the changes or "factual" elements of the "memoir', Defendant Random House proclaimed it non-fiction and offered it for sale to the public.

AS AND FOR A SECOND CAUSE OF ACTION

Promissory Estoppel

25. Plaintiffs repeat and reallege paragraphs 1 through 24 as if fully set forth herein.

26. Defendants clearly and unambiguously promised the public that "A Million Little Pieces" was non-fiction.

27. Defendants knew or should have known that plaintiff and the Classes would rely upon their representations.

28. Plaintiffs, to their detriment, relied upon defendants' representations.

29. By reason of the foregoing, plaintiffs have suffered money damages in an amount to be determined at trial, but not less than Ten Million Dollars ($10,000,000.00).

RELIEF REQUESTED

WHEREFORE, plaintiff and the Classes demand Judgment as follows:

A. As to the First and Second Causes of Action, award plaintiffs compensatory damages against defendants, jointly and severally, including interest thereon, in an amount to be determined at trial, but not less than Ten Million Dollars ($10,000,000.00);

B. As to all Causes of Action, award plaintiffs their reasonable attorney fees, legal expenses and costs; and

C. As to the First Cause of Action, award Plaintiff and the Classes treble damages.

D. Grant plaintiffs such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 30, 2006

Respectfully submitted,

LAW OFFICES OF THOMAS M. MULLANEY

By:
Thomas M. Mullaney
708 Third Avenue, Suite 2500
New York, New York 10017
(212) 223-0800

Attorney for Plaintiff
Jennifer Cohn, Individually and On Behalf Of All Others Similarly Situated

STATE OF NEW YORK, COUNTY OF NEW YORK Index No. Year 2006

JENNIFER COHN, Individually and On Behalf
Of All Others Similarly Situated,

Plaintiffs,

-against-

JAMES FREY and RANDOM HOUSE, INC.

Defendants.

LAW OFFICES OF THOMAS M. MULLANEY
708 Third Avenue, Suite 2500
New York, NY 10017
(212) 223-0800

Attorney(s) for

Office and Post Office Address, Telephone

To

Attorney(s) for

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Dated:

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a *(certified) true copy of a* duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON. one of the judges of the within named Court, at on at M.

Dated,

Yours, etc.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER COHN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, - against - JAMES FREY and RANDOM HOUSE, INC., Defendants.	:	06 CV ______

DECLARATION OF DONALD WEISBERG

Pursuant to 28 U.S.C. § 1746, Donald Weisberg declares and states as follows:

1. My name is Donald Weisberg. I am over the age of 21 and am competent to testify as to the statements set forth in this declaration.

2. I am currently the Executive-Vice President and Chief Operating Officer, North America, of Random House, Inc. ("Random House"), a position I have held since November 2001. In my position, I am familiar with sales figures for books published by Random House and its related corporate entities.

3. I am familiar with the book "A Million Little Pieces," by James Frey. In 2003, "A Million Little Pieces" was published in hardcover by Nan A. Talese, an imprint of Doubleday, a division of Random House. In 2005, "A Million Little Pieces" was published in paperback by Anchor Books, a division of Random House.

4. The suggested retail price of the hardcover edition of the book was $22.95. The suggested retail price for the paperback edition of the book was $14.95.

5. I have reviewed sales figures for "A Million Little Pieces" maintained by Random House in the normal and ordinary course of its business. Through January 7, 2006, Random House sold and shipped to retailers more than 2.5 million copies of the paperback edition. Based on the suggested retail price listed above, the total amount of sales to consumers of "A Million Little Pieces" exceeds $5,000,000.

6. I have also reviewed retail "point of sales" data provided by certain third-parties. Based on this data, I have determined that copies of "A Million Little Pieces" were sold to consumers in all fifty states and that sales to consumers in no single state accounted for more than 33 percent of the total sales to consumers.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 17, 2006 at New York, New York

[signature]

Donald Weisberg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER COHN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, - against - JAMES FREY and RANDOM HOUSE, INC., Defendants.	:	06 CV ______

DECLARATION OF SERVICE

I, TEENA H. LEE, under penalty of perjury, declare and state that I am over eighteen years of age and not a party to the above-captioned action, and that on the 21st day of February, 2006, I caused to be served by hand a true and correct copy of the Notice of Filing of Removal of Civil Action Under 28 U.S.C. § 1441 and Notice of Removal of Civil Action Under 28 U.S.C. § 1441 and exhibits annexed thereto upon:

Thomas M. Mullaney, Esq.
LAW OFFICES OF THOMAS M. MULLANEY
708 Third Avenue, Suite 2500
New York, NY 10017
Attorneys for Plaintiff Jennifer Cohn, Individual and On Behalf of All Others Similarly Situated.

Dated: New York, New York
February 21, 2006

[signature]
TEENA H. LEE

NYC 166078v1 3910039-158

003#1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE MAROLDA, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, -against- JAMES FREY and RANDOM HOUSE, INC., Defendants.	**06 CV 1167** **CLASS ACTION COMPLAINT** Index No. ____ **JURY TRIAL DEMANDED**

FILED U.S. DISTRICT COURT 2006 FEB 15 AM 11:46 S.D. OF N.Y.

Plaintiffs, on behalf of herself and all others similarly situated, allege as follows against JAMES FREY ("FREY") and RANDOM HOUSE, INC. ("RANDOM HOUSE"), on information and belief formed after an inquiry reasonable under the circumstances:

JURISDICTION AND VENUE

1. At all relevant times, Plaintiff Marolda was and is a resident of the State of New Jersey.

2. At all relevant times, Defendant Frey was and is a resident of the State of New York. Additionally, Defendant Frey has conducted and does conduct substantial business in the State of New York.

3. At all relevant times, Defendant Random House was and is a corporation organized under the laws of the State of New York, and is doing business in the State of New York, with its principal place of business located at 1745 Broadway, NY, NY 10019.

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). At least one Class member is a citizen of a different State than both defendants, and the amount in controversy exceeds, exclusive of interest, fees and costs, $5,000,000.00. Plaintiffs in this action

do not seek disgorgement of any fund in which they have a common and undivided interest, but seek to recover separate and distinct damages along with their attorney's fees.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as the acts upon which this action is based occurred in part in this District. Thousands of members of the Class reside in this District, and purchased Defendant Frey's book "A Million Little Pieces" here, and thereby were injured in this District. Random House also deceptively published "A Million Little Pieces" in or from this District. Defendants received substantial compensation and profit in this District.

PRELIMINARY STATEMENT

6. The controversy surrounding Defendant Frey's book "A Million Little Pieces" needs little elaboration at this point. Styled a memoir, Defendant Frey's book was in fact and fictional account of his "history" of criminal conduct and efforts to deal with his drug and alcohol addiction. Millions of people bought this book under those false pretenses (the book has sold nearly four million copies in hard- and soft-cover worldwide). Some, including the Class representative (a health care professional), bought it specifically because of its redemptive theme, and recommended it to others for that same reason.

7. Random House published "A Million Little Pieces" as a memoir, but only after it was originally submitted as fiction. Not believing it was marketable as fiction, Random House instructed the author to resubmit it as a memoir. After Defendant Frey did so, Random House then went on to publish and sell "A Million Little Pieces" without checking which if any of the newly-factual elements of the memoir were actually true.

8. The purpose and effect of this deceptive and unlawful conduct has been to deceive millions of purchasers of "A Million Little Pieces." Those consumers have been injured by paying for a book they would otherwise have not bought, recommended, or read.

9. These claims are prosecuted by two classes. The first class consists of all United States purchasers of "A Million Little Pieces" during the Class Period, as defined in paragraph 12 below.

10. The second (alternative) class consists of the New York State purchasers of "A Million Little Pieces" during the Class Period, as defined in paragraph 12 below.

PARTIES

11. Plaintiff Diane Marolda resides in New Jersey. In 2005, before the revelations of the falsehoods in "A Million Little Pieces" became public, Ms. Marolda purchased and read the book. In addition, Mrs. Marolda, recommended the book to people who were struggling with substance abuse.

12. Various individuals, partnerships, corporations and associations not named as defendants in this Complaint have participated in the violations alleged herein and have performed acts and made statements in furtherance hereof.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action as a class action pursuant to Article 9 of the CPLR on her own behalf and on behalf of all other members of the two classes described above. The relevant time period for both Classes is April 2003 to January 23, 2006. ("the Class Period").

14. Both classes exclude defendants, their co-conspirators and their parents, subsidiaries, affiliates, officers, directors and employees. Also excluded are any Federal, state or

local governmental entity, and any judge or judicial officer presiding over this matter, judicial staff, and the members of their immediate families.

15. The Classes are so numerous that joinder of all members is impracticable. There are tens of thousands of members of the Classes who are geographically dispersed throughout as well as outside the State of New York.

16. Plaintiff's claims are typical of the claims of the members of the Classes because Plaintiff and all Class Members were injured by the same wrongful conduct of the Defendants alleged herein.

17. There are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual Class members. Such common questions include:

- Whether James Frey falsified portions of "A Million Little Pieces";
- Whether Defendant Frey did so at the behest of Defendant "Random House";
- Whether Defendant Random House knew of Defendant Frey's falsifications;
- Whether Random House published and sold "A Million Little Pieces" either despite or because of those falsifications;
- Whether the alleged conduct violated N.Y. Gen. Bus. Law § 340;
- Whether the alleged conduct violated N.Y. Gen. Bus. Law § 349;
- Whether the alleged conduct violated U.C.C. §§ 2-314 and 315;
- Whether Plaintiff and the Classes have a claim for fraud, negligent misrepresentation, reasonable reliance and/or unjust enrichment;
- Whether Plaintiff and members of the Classes are entitled to damages and the appropriate measure of such damages.

18. As the claims of Plaintiff are typical of the claims of the Classes, and Plaintiff has no interests adverse to or which irreconcilably conflict with other members of the Classes, Plaintiff is an adequate Class representative.

19. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced and competent counsel knowledgeable in the prosecution of class action litigation. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against a large corporate defendant. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

20. New York has a clear and substantial interest in preventing the conduct described herein as the alleged wrongdoing occurred in New York in part and affected all Class members, among others.

AS AND FOR A FIRST CAUSE OF ACTION

N.Y. Gen Bus. Law
(Against All Defendants)

21. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 20 hereof with the same force and effect as if fully set forth herein.

22. N.Y. Gen. Bus. Law §349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

23. N.Y. Gen. Bus. Law §349(h) provides that "any person who has been injured by reason of any violation of this section may bring…an action to recover his damages or fifty dollars, whichever is greater…The court may award reasonable attorney's fees to a prevailing plaintiff."

24. By reason of the deceptive conduct alleged above, Defendants engaged in consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner. Defendants conduct caused millions of readers of "A Million Little Pieces" to purchase that book under the false pretense that it was a memoir.

25. Plaintiff and the Class also seek treble damages pursuant to N.Y. Gen. Bus. Law §349(h) because defendants' conduct was willful and knowing. To wit, Defendant Random House instructed Defendant Frey to re-label his book, originally submitted as fiction, as a "memoir" to make it saleable. Then, without checking any of the changes or "factual" elements of the "memoir", Defendant Random House proclaimed it non-fiction and offered it for sale to the public.

AS AND FOR A SECOND CAUSE OF ACTION

Promissory Estoppel
(As Against All Defendants)

26. Plaintiffs repeat and reallege paragraphs 1 through 25 as if fully set forth herein.

27. Defendants clearly and unambiguously promised the public that "A Million Little Pieces" was non-fiction.

28. Defendants knew or should have known that plaintiff and the Classes would rely upon their representations.

29. Plaintiffs, to their detriment, relied upon defendants' representations.

30. By reason of the foregoing, plaintiffs have suffered money damages in an amount to be determined at trial, but not less than Ten Million Dollars ($10,000,000.00).

RELIEF REQUESTED

WHEREFORE, plaintiff and the Classes demand Judgment as follows:

A. As to the First and Second Causes of Action, award plaintiffs compensatory damages against defendants, jointly and severally, including interest thereon, in an amount to be determined at trial, but not less than Ten Million Dollars ($10,000,000.00);

B. As to all Causes of Action, award plaintiffs their reasonable attorney fees, legal expenses and costs; and

C. As to the First Cause of Action, award Plaintiff and the Classes treble damages; and

D. Grant plaintiffs such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 13, 2006

Respectfully submitted,

LAW OFFICES OF THOMAS M. MULLANEY

By: ______________________
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Attorney for Plaintiff
Diane Marolda, Individually and On Behalf Of All
Others Similarly Situated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE MAROLDA, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, -against- JAMES FREY and RANDOM HOUSE, INC. Defendants.	:	Index No. ____________ STATEMENT OF RELATED CASE STATUS

On January 27, 2006 the case of Michelle Snow, Individually and on behalf of all Others Similarly Situated, was filed against several defendants, including the two named in this action. The facts surrounding the action are very similar, being the purchase of the same consumer good under false pretenses, although the Snow case relies upon a New Jersey consumer protection statute, and this case a New York law.

Date: February 15, 2006

Thomas M. Mullaney (TM 4274)